

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:08CR3037
)	
v.)	
)	
JOSE LUIS RODRIGUEZ,)	TENTATIVE FINDINGS ON THE
)	PRESENTENCE INVESTIGATION
Defendants.)	REPORT
)	

Objections to the Presentence Investigation Report have been made by the defendant of paragraphs 17 through 30, and paragraphs 32 and 39 insofar as they “purport to establish the drug quantity for which the defendant should be held accountable and the corresponding base offense level.” The defendant objects to paragraph 40 regarding possession of a dangerous weapon. He objects to the criminal history category as over-representing the seriousness of the defendant’s criminal history or the likelihood that he will commit other crimes. He objects to the lack of a recommendation for a variance under § 3553(a)(1).

The burden is upon the United States to prove by the greater weight of the evidence the amount of methamphetamine for which Mr. Rodriguez is responsible and whether the defendant possessed a dangerous weapon during and in furtherance of a conspiracy to possess with intent to distribute methamphetamine.

The burden is on the defendant to show that his criminal history category substantially over-represents the seriousness of his criminal history or the likelihood that he will commit other crimes. The burden is also on the defendant to show that a lack of a recommendation for a variance is inappropriate. His motion for variance is filing 72.

The defendant asks for an opportunity to present oral testimony and to cross-examine testimony of government witnesses and exhibits at the time of the sentencing.

Other than the subjects of the objections set out above, I find that the Presentence Investigation Report is true and accurate.

IT IS ORDERED that evidence to resolve the foregoing objections may be introduced at the time of the sentencing. Further objections may be made, but no evidence respecting them shall be received.

Dated March 18, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge